

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**CARDELL TOLIVER, IN HIS
REPRESENTATIVE CAPACITY,
ON BEHALF OF ALL WRONGFUL
DEATH BENEFICIARIES OF
CORNELIUS TOLIVER**

PLAINTIFF

VERSUS

CIVIL ACTION NO. 4:03CV11-P-B

**NATIONAL HERITAGE REALTY, INC.,
D/B/A GREENWOOD HEALTH AND
REHABILITATION CENTER; AND JOHN
AND JANE DOES 1-10**

DEFENDANTS

ORDER

This cause is before the Court on the defendant's Motion in Limine to Exclude the Presentation of Certain Photographs [165]. The Court, having reviewed the motion, the response, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendant requests the entry of an order prohibiting plaintiff from introducing into evidence any photographs, slides or computer generated photographs depicting wounds found on Mr. Toliver's body that were allegedly caused by Greenwood Health and Rehabilitation Center, citing F.R.E. 403 as the sole support for its motion. Plaintiff's response to the instant motion cites the obvious relevance of the photographs as evidence of Mr. Toliver's injuries, as well as the extent of his pain and suffering. Neither party provided the Court with copies of the photographs at issue.

Because it is clear that the photographs are probative of material issues in this case and because the defendant has failed to persuade the Court that the photographs are unfairly prejudicial,

the defendant's motion is not well-taken and should be denied. However, the Court reserves ruling on the admissibility vel non of the photographs, as well as the right to limit the number of such photographs to be published to the jury. Accordingly, the plaintiff is to obtain a ruling regarding admissibility before introducing such testimony or other evidence in the presence of the jury.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant's Motion in Limine to Exclude the Presentation of Certain Photographs [165] is not well-taken and should be, and hereby is, DENIED.

SO ORDERED, this the 28th day of February, 2006.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE